

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE:

**BUFORD EARLS**  
Pendleton, Indiana

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**  
Attorney General of Indiana

**MONIKA PREKOPA TALBOT**  
Deputy Attorney General  
Indianapolis, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

BUFORD EARLS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

No. 49A02-0711-CR-966

---

APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Grant W. Hawkins, Judge  
Cause No. 49G05-0607-FC-130712

---

**April 18, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## **Case Summary**

Buford Earls appeals the trial court's denial of his request for sentence modification. We affirm.

### **Issue**

Earls raises one issue on appeal, which we restate as whether the trial court properly denied Earls's request for sentence modification.

### **Facts**

Earls pled guilty to Class C felony forgery on November 1, 2006.<sup>1</sup> The trial court sentenced him to six years, with three suspended. That sentence was to be served consecutively to a sentence for another pending case. On August 31, 2007, Earls filed a motion requesting sentence modification. Earls contended that the trial court should consider his disability, his participation in a prison program, his need to support his family, and his remorse as support for his request for a reduced sentence or new placement. The trial court denied the motion on September 4, 2007. This appeal followed.

### **Analysis**

Generally, a trial court has no authority over a defendant after it pronounces sentence. See State v. Fulkrod, 753 N.E.2d 630, 633 (Ind. 2001). Indiana Code Section

---

<sup>1</sup> This is a summary of the basic timeline and facts presented in and supported by the sparse record. No details of the forgery conviction are included, and no transcript has been attached.

35-38-1-17 grants limited authority to the trial court to consider a sentence modification.

That statute provides in part:

(a) Within three hundred sixty-five (365) days after:

(1) a convicted person begins serving the sentence imposed on the person;

(2) a hearing is held:

(A) at which the convicted person is present;  
and

(B) of which the prosecuting attorney has been notified; and

(3) the court obtains a report from the department of correction concerning the convicted person's conduct while imprisoned;

the court may reduce or suspend the sentence. The court must incorporate its reasons in the record.

Ind. Code § 35-38-1-17(a). The specific language of this statute directs that the trial court “may reduce or suspend the sentence” and not that it must do so. Id. Nothing in the statute mandates that a trial court must address, schedule a hearing, or even issue a written order responding to such a request. Therefore, the trial court's decisions regarding such requests are discretionary. It is within the province of trial courts to, as the trial court did here, merely deny the motion outright by signing and dating the motion, with a notation “Denied.” App. p. 1. Earls presented a two-page document to the trial court with unsupported assertions of a disability, support obligations, remorse,

and rehabilitation.<sup>2</sup> It was within the trial court's discretion to deny the request and leave the original sentence in place.

Earls urges us to direct the trial court to hold a hearing on his request. This court has previously declined defendants' requests to create a requirement that a hearing must be held before ruling upon a sentence modification. See Manley v. State, 868 N.E.2d 1175, 1178 (Ind. Ct. App. 2007) (observing that if defendant believes courts should conduct hearings before ruling on requests for sentence modifications, he or she should direct efforts toward convincing the legislature to amend the statute), trans. denied; Robinett v. State, 798 N.E.2d 537, 539 (Ind. Ct. App. 2003) (explaining that the notice and hearing requirements are imposed only when a trial court makes a preliminary decision to reduce or suspend the sentence), trans. denied. We will not order the trial court to conduct a hearing on Earls's request.

### **Conclusion**

The trial court did not abuse its discretion by denying Earls's request to modify his sentence. We affirm.

Affirmed.

CRONE, J., and BRADFORD, J., concur.

---

<sup>2</sup> Paragraph 9 of the request for modification references an exhibit, but none has been attached here.